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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 581

MARY PYEATTE,

Appellant,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

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STATEMENT IN SUPPORT OF JURISDICTION

The plaintiff-appellant, having presented this day her petition for appeal and assignment of errors, now files this her statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order and judgment in question, and should exercise such jurisdiction in this case.

I

Statutes Sustaining Jurisdiction

The Supreme Court of the United States has jurisdiction to review this cause on appeal under the provisions of Title 28 United States Code, Section 1253, this being an appeal from an order denying, after notice and hearing, an injunction in a civil action required by an act of Congress to be heard and determined by a district court of three judges (Title 28 United States Code Annotated, Section 2281). The District Court for the Western District of Oklahoma sitting as a specially constituted three-judge court rendered a final judgment in this cause sustaining the validity of an order made by an administrative board acting under statutes of the State of Oklahoma after the validity of that order and statutes had been placed in issue by the plaintiff on the ground of its being repugnant to the Constitution of the United States.

II

The State Statutes and Administrative Orders, the Validity of Which Are Involved

The Oklahoma Statutes, the validity of which are involved, are Section 2073 of Title 70 O. S. A. 1941, subsections (f) and (g), and Section 1306.2 of Title 70 O. S. A. 1941:

> "(f) To fix rents, charges and fees to be imposed in connection with and for the use of the building and the facilities supplied thereby, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the building, and are hereby expressly required to be fully sufficient to assure

the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the building, and with reference to requiring any class or classes of students to use the building as it may deem desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this act:

"(g) To covenant to maintain a maximum percentage of occupancy of the building;"

The full text of these statutes is set forth in the appendix hereto.

Order by Board of Regents of University of Oklahoma and the University of Oklahoma Housing Authority, State Boards, Acting Pursuant to State Statutes, the Validity of Which Is Involved.

The defendant Board of Regents of the University of Oklahoma is an administrative board and agency of the State of Oklahoma and exercises over-all authority with reference to the regulation of instruction and admission of students to the University of Oklahoma, and is an agency operated as a part of the educational system of the State and maintained by appropriation from the public funds of the State raised by taxation from the citizens and tax payers of the State of Oklahoma; the University of Oklahoma Housing Authority was created by Title 70 O. S. A., Section 1306.1, designated as a body corporate, and given the power to erect dormitories and create and furnish dining facilities, and by Title 70 O. S. A., Section 1306.3, the members of the Board of Directors of the University of Oklahoma Housing Authority was made identical with the Oklahoma University Board of Regents. The defendant Board of Regents of the University of Oklahoma, acting as a State Board, pursuant

to the statutes of Oklahoma, adopted an order which appears in the minutes of the said Board as follows:

"RESOLUTION OF STUDENT HOUSING ADOPTED BY BOARD OF REGENTS SEPTEMBER 10, 1947, AS AMENDED FEBRUARY 14, 1948

"WHEREAS, it is the belief of the administration of the University of Oklahoma that students derive maximum benefit from their University education when they live in University-supervised housing, and

"Whereas, the Board of Regents of the University of Oklahoma has pledged itself to establish rules and regulations to insure as nearly as possible 100 per cent occupancy of certain housing units constructed or acquired by the University and the University Housing Authority with the proceeds of bond issues, namely the Residential Halls, Niemann Apartments, Whitehand House, Wilson Center Dormiteries, and the Sooner City family dwelling units.

"Now therefore, be it resolved by the Board of Regents of the University of Oklahoma:

(1) That all undergraduate, unmarried students be required to live in University-operated dormitories to the extent that such dormitory rooms are available on the Main Campus of the University; provided that such requirement shall not apply to undergraduate, unmarried students who a) live with parents or other relatives in Norman or b) commute from a place of residence outside Norman or c) work for room in lieu of paying rent; and provided further that such requirement shall not apply to students who live in a fraternity, sorority or approved student cooperative house, except that all freshman women students not in categories a, b, or c above shall live in University-operated dormitories to the extent such facilities are available.

(2) That all undergraduate, married students living in Norman with husband or wife be required to live in University-operated family dwelling units in

Sooner City, Boyd House, and Neimann Apartments to the extent that such family dwelling units are available, provided that such requirements shall not apply to undergraduate, married students who a) live with parents or other relatives in Norman b) work for living quarters in lieu of paying rent or c) own and occupy their homes in Norman.

(3) That whenever vacancies exist in any of the above-mentioned bond issue housing projects on the Main Campus and there are also vacancies in housing units serving the same classifications of students on either the North Campus or the South Campus, the vacancies in the said bond issue housing projects shall be filled before any student assignments are made to the vacant units on the North Campus or South Campus.

(4) That the President of the University is authorized to establish procedures to administer the above-stated policies.

In refusing to enjoin the enforcement of this order the Court held, as a matter of law, that:

"The plaintiff has not in any way had her rights to contract for roomers and boarders impaired."

"The Housing Regulations in effect at the University of Oklahoma result in completely depriving a student of freely contracting with whom he pleases for a place to live. If this restriction upon the student is a valid exercise of the power conferred upon the Board of Regents to prescribe rules for admission to the University, it is absurd for the plaintiff to contend that the indirect effect deprives her of her liberty to contract, for the fact that regulatory law enacted under state power imposes hardship in individual cases, due to special circumstances or other factors, does not subject the law to constitutional objections."

The Court refused to enjoin the enforcement of either the statutes or the order, dismissed the complaint of the plaintiff, and rendered judgment for the defendants.

III

Dates of Judgment and of Application for Appeal

The date of the judgment of the District Court of the United States for the Western District of Oklahoma which is now sought to be reversed was January 10, 1952. The application for appeal was presented January 12, 1952.

IV

Nature of the Case and Rulings of the District Court

On the 6th day of September, 1951, plaintiff filed in the District Court of the United States for the Western District of Oklahoma a complaint seeking a three-judge court as required by Section 266 of the Judicial Code (28 U. S. C. A., section 2281) for the issuance of a preliminary and permanent injunction against the Board of Regents of the University of Oklahoma, the University of Oklahoma Housing Authority and George L. Cross enjoining them from enforcing subsections (f) and (g) of section 2073 of Title 70 O. S. A. 1941, and the order of the Board of Regents denying the students the right to enroll unless the students break their contract with the plaintiff. Complaint alleged that the plaintiff, Mary Pyeatte, was a resident of Norman, Oklahoma engaged in the rooming and boarding house business, and gains her livelihood by keeping student roomers and boarders that attend the University of Oklahoma; that her house has received official approval of the authorities of the University of Oklahoma for the keeping of male students and has met all specifications required by the Board of Regents of the University of Oklahoma for the rooming and boarding of University students; that the defendants, Board of Regents of the University of Oklahoma and the University

of Oklahoma Housing Authority, deny students that enroll in the University the right of contract with the plaintiff until such time as all of the University owned and operated dormitory rooms for men and women have been filed to capacity; that when a student contracting with the plaintiff for board and room goes to enroll at the University the defendants will not permit such student to enroll until such time as the student has breached the contract plaintiff has with the student.

Motion was made for an interlocutory injunction. On the 27th day of September, 1951, the three-judge Court was convened and said cause was presented.

On the 18th day of December, 1951, the three-judge Court issued its opinion. In the opinion the Court held:

a. "The statutory provisions passed by the Legislature and set out above were for the purpose of delegating to the Board of Regents of the University the power to take steps to insure adequate facilities for the housing of students who would then and in the future attend the University of Oklahoma. The Housing Regulations were promulgated and put into force and effect as a means for accomplishing the end in view."

b. "The question thus 'do the statutes and rules involved here deprive the plaintiff of any property right without due process of law?' must be answered in the negative."

c. "It would appear here, as in the preceding discussion, that if any discrimination is involved, and we do not pass upon this point, it is against the students and not against the private home owners such as the plaintiff. Thus the plaintiff would not be in a position to challenge the constitutionality of the statutes or regulations promulgated under and by force of the power conferred upon the Board of Regents by such statutes."

V

The Statement of the Grounds upon Which It Is Contended That the Questions Involved Are Substantial

Summary

The issue presented by this case has never been decided by the Supreme Court of the United States.

Since 1892 when the University of Oklahoma was founded students attending the University have been permitted to freely contract with private householders for board and room while attending the University.

In 1943 the Legislature passed statutes creating the University of Oklahoma Housing Authority. Title 70 O. S. A., sections 1306.1—1306.11, the full text of which is set forth in the appendix hereto.

In 1945 the Legislature passed statutes authorizing the Board of Regents to build dormitories and dining halls. Title 70 O. S. A., sections 2071—2080, the full text of which is set forth in the appendix hereto.

On September 10, 1947, the Board of Regents passed a resolution, which was amended February 14, 1948, which prohibited students attending the University from contracting for board and room with private householders until such time as all the University owned rooms for men and women have been filled.

The resolution of the Board of Regents exempted from living in University owned and operated housing University students living in privately owned and operated fraternities and sororities. Students living in fraternity and sorority houses could freely choose where they would live.

In applying and enforcing the order or rules the Board of Regents also exempted Newman Hall, a privately owned denominational dormitory for female students. Students

living there were not compelled to live in University housing.

The result of the enforcement of said rules has been to restrain students from contracting for room and board with the plaintiff, with a consequent increase in the number of vacancies in the plaintiff's rooming house and a decline in the volume of the plaintiff's boarding business. Said vacancies and decrease in boarding business has greatly lessened the value of plaintiff's property.

Many of the persons keeping boarding and rooming houses for Oklahoma University students are aged and infirm and rely entirely upon the income from their rooming and boarding houses for their livelihood, and their income has been drastically reduced as a result of said rules. Many cannot meet the loan payments or taxes due on their houses.

Thus, this Court is asked to decide:

1. Whether Title 70 O. S. A., section 2073, subsections (f) and (g) granting the Board of Regents the right to make rules and regulations to compel students attending the University to live in University owned housing deprives plaintiff of her right to contract and her property without due process of law, contrary to the Fourteenth Amendment.

2. Whether said Regents' rules, insofar as they prevent contractual relations from being entered into between certain of the student body of Oklahoma University and the plaintiff, deprive the plaintiff of her liberty to contract and her property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution.

3. Whether said Regents' rules, insofar as they permit fraternal organizations, church dormitories, and others engaged in the rooming and boarding business, to contract with students for their room and board, while denying a similar privilege to the plaintiff, are unreasonable, arbitrary and discriminatory, and deny to the plaintiff the equal pro-

tection of the laws, contrary to the Fourteenth Amendment to the Federal Constitution.

VI

ARGUMENT

The right here involved is set forth clearly in the prayer for relief where plaintiff sought an injunction restraining the defendants from interfering with plaintiff, and others on behalf of whom she sues, to contract with the students for board and room. The right of the plaintiff of liberty to contract in such cases has not been decided by the Supreme Court of the United States.

A

Deprivation of Property and Liberty to Contract Without Due Process of Law

By virtue of the Fourteenth Amendment to the Constitution of the United States, section 1, the several states are prohibited from depriving any person of life, liberty, or property without due process of law.

It has long been established that the right to contract is both a liberty and a property right within the protection of the Fourteenth Amendment to the Federal Constitution. *Holden* v. *Hardy*, 169 U. S. 366; *Terrace* v. *Thompson*, 263 U. S. 197.

In *State* v. *Tabasso Homes, Inc.*, 28 A. (2d) 248, 3 Ter. 106, the court reaffirmed this proposition in the following language:

> "The right to contract is one of the great inalienable rights accorded to every free citizen * * *. If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting

and that this freedom of contract shall not lightly be interfered with."

The cases are uniform that the action of state administrative agencies, such as the defendants here, are subject to the same constitutional restraints that the legislature would be subject to, and that action by such agencies is "state action", against which the Fourteenth Amendment only protects. *Parker* v. *University of Delaware*, 75 A. (2d) 225; *Mooney* v. *Holohan*, 294 U. S. 103; *Smith* v. *Allwright*, 321 U. S. 649.

The mere fact that the rules and regulations herein complained of are directed toward students attending the University and not toward the plaintiff herein does not prevent equity granting the relief sought. *William Truax, Sr.*, v. *Mike Raich*, 239 U. S. 33.

The United States Supreme Court has also given protection to those substantive rights which it has found to be included within the liberty guaranteed by the due process clause of the Fourteenth Amendment. *Myers* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510. In each of these cases the Court found that the state, notwithstanding its power to regulate all schools, had interfered with a right belonging to the individuals protected by this clause and which was beyond the power of the state to regulate.

The plaintiff, and others similarly situated, seek relief against arbitrary, unreasonable and unlawful interference with the students attending the University of Oklahoma, and the consequent destruction of their business and property. The right to conduct a boarding and rooming house for students is property.

It has been repeatedly held that what a state may not do directly, it may not do indirectly. *Minnesota Tea Co.* v. *Helvering*, 302 U. S. 609.

In the case at bar the Board of Regents of the University of Oklahoma has made, and the Housing Authority of the University of Oklahoma has enforced, rules requiring students to live in University housing. The initial impact of these rules is borne by the students subject to them. But the initial effect of the rules is sharply felt by the plaintiff herein. Although the plaintiff is not directly prohibited from contracting with the students, the students are prohibited from contracting with the plaintiff on pain of dismissal from or refusal of admittance to the University of Oklahoma. Of what consequence is it whether the restraint is laid upon one party to a contract or the other? The freedom of contract is restricted as much by the one mode as by the other.

If the state is prohibited from depriving a person of his constitutional right to contract directly, then this right may not be lost by indirection—by prohibiting others from contracting with that person.

That the legislature of Oklahoma never intended to deprive private householders of the right to contract with students attending the University is clearly expressed in Title 70 O. S. A., section 1306.8 (d) (1).[1]

The court below erred in applying *Hamilton* v. *Regents of the University of California*, 293 U. S. 225, and *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U .S. 589. The housing regulation is not a valid exercise of

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[1] "• • • It is the intention of this Act that the rates and charges of the Housing Authority shall be such fair and reasonable rates for lodging and board of students as shall accomplish the following purposes:

"1. To provide substantial accommodations for students at a cost which in the judgment of the Directors is fair and reasonable to the student and which will not discourage private rooming and boarding agencies from engaging in the business of boarding and rooming students in the community; it being the purpose of this Act to encourage the maintenance of such facilities and to standardize the character and quality of such student facilities and to insure their adequacy."

the power conferred upon the Board of Regents to prescribe rules for admission to the University. If the Regents possessed such power they could also prescribe what clothes the students could wear, where they must buy their books, have their laundry, cleaning and pressing done, and what stores in the community they could patronize, all under the guise of prescribing rules for admission to the University. The oppression of these rules is felt by the plaintiff in the exercise of her constitutionally guaranteed rights, *i.e.*, the rights to carry on a lawful business and occupation in the pursuit of happiness.

The University cannot be given a monopoly in housing. Art. II, sections 31, 32, and Art. V, section 51 of the Oklahoma Constitution.[2] *Rice* v. *State*, 108 Okla. 4, 232 P. 807.

Neither may it successfully be argued that it is the students' voluntary choosing to enroll in the University that results in the deprivation complained of, rather than state action against which the Fourteenth Amendment only protects. The sole motive, purpose and reason that students have in contracting with plaintiff is that they might have food and lodging while they are away from their homes attending the University. If a student must withdraw from

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[2] Article II, section 31 of the Oklahoma Constitution provides,

"The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than educational and scientific purposes and for the support of its penal, charitable, and educational institutions."

Article II, Section 32, of the Oklahoma Constitution provides,

"Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State."

Article V, Section 51, of the Oklahoma Constitution provides,

"The Legislature shall pass no law granting to any association, corporation, or individual any exclusive rights, privileges, or immunities within this State."

or refrain from enrolling in the University in order to contract with the plaintiff, then his sole motive and purpose in contracting is gone. The plaintiff is effectively prevented from contracting with the students at Oklahoma University whether they enroll or withdraw from the University, since the student would no longer be in Norman. Surely the Court will not permit a rule to stand which makes the exercise of a constitutional right of one individual contingent upon the exercise of a privilege by another.

We admit that the liberty to contract and the right to hold and use property as one desires are subject to a legitimate exercise of the police power by the State. *International Harvester Co.* v. *Missouri*, 234 U. S. 100. The measure under attack here is not properly within the scope of the police powers of the State.

In *De Haviland* v. *Warner Bros. Pictures, Inc.*, 153 P. (2d) 983, 988, 67 C. A. (2d) 225, the Court said:

> "The validity of legislation infringing upon the right of contract is to be judged from its tendency to promote the welfare of the general public rather than that of a small percentage of its citizens."

In the case at bar the rules complained of were authorized, promulgated and enforced with the sole purpose of assuring the bondholders that sufficient revenue would be produced from the dormitories to retire the bonds. These bonds are tax free and the state lands on which the dormitories are built is tax exempt. In any event it cannot be said that the construction and occupation of the dormitories is a measure to promote the general welfare, public safety, health or morals.

If the measure cannot be justified as a police measure, then it is unjustifiable, for it is uniformly conceded that "the power to restrict the right of private contract does not exist independently of the power to legislate for the purpose

of preserving the public comfort, health, safety, morals and welfare." *Holden* v. *Hardy*, 169 U. S. 366; *Prudential Ins. Co. of America* v. *Prescott*, 176 So. 875, 130 Fla. 11.

Furthermore, it has repeatedly been held that freedom of contract is the general rule and restraint the exception, and that legislative authority to abridge it can only be justified by exceptional circumstances. *Wolff Pack Co.* v. *Court of Industrial Relations*, 262 U. S. 522.

Many states have realized the danger involved in an expansion of the "police power" of the states. *Ex Parte Drexel*, 82 Pac. 429, 147 Cal. 673.

In line with the above authorities, many courts have held that the State may not, under the guise of protecting the public, arbitrarily interfere with private business or impose unreasonable and unnecessary restrictions upon them. *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504.

The constitutionality of the rules and regulations under attack is a matter entirely separate and distinct from the constitutionality of the statute under which they were promulgated, Title 70 O. S. A. section 2073. The Supreme Court of the United States has recognized this in *U. S.* v. *Rock Royal Co-Op.*, 307 U. S. 533. That case held, in effect, that a statute, constitutional on its face and valid when enacted or when given a particular application, may be invalid under changed conditions, or when given application which results in arbitrary and prejudicial discrimination, or the taking and transfer of property without compensation.

B

Unequal Protection of the Laws

The defendant Board of Regents of the University of Oklahoma promulgated the following rule:

> "That all undergraduate, unmarried students be required to live in University-operated dormitories to

> the extent that such dormitory rooms are available * * *; provided that such requirement shall not apply to undergraduate, unmarried students who * * * live in a fraternity * * *."

The above exception permits fraternal organizations (fraternities and sororities) to enter into contractual relations with students, thereby preserving the usual and sole means of income of said fraternities, while the rule makes no exception in favor of plaintiff herein, and denies to her, in effect, a substantial part of her usual and sole means of income.

For the Fall semester of 1951 a total enrollment of 8000 students is expected at the Oklahoma University. Some 1500 of these students will live in fraternity and sorority houses. They do not come under the housing rules.

The state may make classifications in the application of its laws but the classification must be a reasonable one and not arbitrary, and the classification must bear some reasonable relation to the objectives sought to be accomplished by the legislation. This proposition is affirmed in *Asbury Hospital* v. *Cass County*, 326 U. S. 207; and *Barber* v. *Connolly*, 113 U. S. 27.

In *Hamilton* v. *Regents of the University of California*, 293 U. S. 225, all male students attending the University were required to take basic military training. In *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U. S. 589, no student attending the university could belong to a fraternity.

In the case at bar all students were not equally affected. If a student belongs to a fraternity or sorority they choose where they wish to live while attending the university and contract with the fraternity or sorority for board and room, while non-fraternity and non-sorority students are compelled to live in University-operated housing and cannot

choose where they will live and cannot contract with the plaintiff and other private householders.

If a female student chooses to live in Newman Hall, the privately operated church dormitory, she is exempt from the housing rule.

When the law lays an unequal hand on those who are engaged in identical business and permits one to contract and not the other, there has been an invidious discrimination. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Skinner* v. *State of Oklahome ex rel Williamson, Attorney General of Oklahoma*, 316 U. S. 535; *State of Missouri ex rel Gaines* v. *Canada*, 305 U. S. 377.

The cases are uniform that the action of state administrative agencies, such as the defendants here, is subject to the same constitutional restraints that the Legislature would be subject to, and that action by such agencies is "state action", against which the Fourteenth Amendment only protects. *Ex Parte Virginia*, 100 U. S. 339; *Mooney* v. *Holohan*, 294 U. S. 103.

It is asserted that the classification made between fraternal organizations and Newman Hall and private householders in the application of the rules under attack is unreasonable, arbitrary, discriminatory, and based on no reasonable distinction, and that therefore, said classification has no basis or relation to the objectives sought to be accomplished by the rules, and said rules deny the plaintiff the equal protection of the laws.

If the Court finds that the rules are not arbitrary and discriminatory and that there is a reasonable basis for the classification made, said rules may yet be unconstitutional if the classification bears no reasonable relation to the object to be accomplished by the rules. *Bayside Fish & Flour Co.* v. *Gentry*, 297 U. S. 442; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Matthews*, 174 U. S. 96.

It should be noted that the constitutionality of the statute under which these rules were promulgated and the rules themselves are two distinct and separate matters, and that the former may be constitutional while the latter may not. *Thompson* v. *Spear*, 91 F. (2d) 430.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356,

The Court said:

> "It is recognized * * * that administration of laws at the local level may be such as to discriminate * * * in violation of the equal protection clause of the fourteenth amendment even though the laws themselves are * * * fair and non-discriminatory on their face."

This principle was rephrased in *Montgomery* v. *Suttles*, 13 S. E. (2d) 781, 191 Ga. 781, wherein

The Court said:

> "Though the law itself be fair on its face, and impartial in appliance, yet, if applied and administered by public authority with an * * * unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

It is plaintiff's contention that the measures under attack were not promulgated in the exercise of any police power of the State of Oklahoma. Even assuming that this is true, it is clear that the power of the state is yet limited by the equal protection clause of the Federal Constitution. *Atchison, Topeka & S. F. Ry. Co.* v. *Vosburg*, 238 U. S. 56.

C

Title 70 O.S.A. Section 2073(f) is Null and Void as Attempted Delegation of Power Which Legislature Itself Did Not Possess.

It is a well established rule of law that that which the legislature may not do itself, it may not validly authorize one of its agencies to do. Or, stated another way, the legislature cannot delegate power that it does not possess. *Almond* v. *Gilmer*, 49 S. E. (2d) 431, 188 Va. 1; *Wilemon* v. *Brown*, 51 F. Supp. 978.

For the very same reason the defendants herein cannot promulgate rules depriving plaintiff of her property and liberty without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States. The legislature of Oklahoma cannot validly authorize such rules to be enacted. Any such attempt as made in Title 70 O. S. A., Section 2073(f) is abortive, null and void.

Conclusion

Plaintiff, seeking the right to contract, has been subjected to varying degrees of discrimination. Her individual right is lost pursuant to alleged public policy derived from statutes clearly unconstitutional which the Fourteenth Amendment was intended to abolish, and by administration of orders by a public authority so as to discriminate against the rights of the plaintiff in violation of the equal protection clause of the Fourteenth Amendment.

Respectfully submitted,

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APPENDIX "A"

Title 70, O. S. A.

Housing Authority

§ 1306.1 Authority created—Purchases and leases—Indebtedness or pledge of credit not authorized

There is hereby created the University of Oklahoma Housing Authority (herein called the Housing Authority), a public purpose non-profit agency, body politic and corporate with the authority to exercise the rights, privileges and functions hereinafter specified.

The Housing Authority shall have the power to purchase and lease land or buildings suitable for its purposes, to erect dormitories and create and furnish dining facilities. The Board of Regents of the University is hereby authorized to execute leases of building sites to the said Housing Authority under the terms and limitations hereinafter set forth. Provided, that nothing in this Act or in any other Act or law contained shall be construed as authorizing the said Housing Authority to create any indebtedness payable out of taxes or assessments or out of the funds of the State of Oklahoma or of any subdivision, institution or agency thereof, nor in any manner to pledge the credit of the State of Oklahoma or any subdivision thereof or any agency or institution thereof. The Housing Authority provided for herein shall have no authority under this Act to purchase or lease land or buildings, or to furnish building facilities at any point within the State of Oklahoma outside the limits of the County of Cleveland, said State of Oklahoma. Laws 1943, p. 226, § 1.

§ 1306.2 Powers, rights and privileges—Liability for injuries and damages

The Housing Authority shall have and is hereby authorized to exercise the following powers, rights and privileges:

a. To purchase or lease real estate for the erection of dormitories and dining facilities convenient to the Uni-

versity of Oklahoma and for the use of students thereof; to erect, operate and manage such dormitories and dining facilities for students of the University on a basis that will enable the Housing Authority to meet its obligations and finance its building, housing and boarding program and accomplish the purposes of this Act; and further, to utilize the property, buildings and facilities so acquired, in cooperation with the government of the United States by appropriate agreement, in the administration of any educational or training program which may be instituted by the United States or its agencies in connection with the prosecution of the national defense or of preparation therefor, including post-war rehabilitation.

b. Subject to the provisions of this Act from time to time to sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein, which shall not be necessary for the carrying out of the purposes of said Housing Authority; provided, that no sub-lease of properties leased from the University of Oklahoma shall be made to any person or corporation unless express consent to do so is first obtained from the Board of Regents of the University of Oklahoma; and provided further, that no business except for the purposes provided in sub-paragraph a of this Section shall be conducted, on such premises so leased by the University of Oklahoma to the Housing Authority by any person or corporation or by any trustee or receiver.

c. To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate any and all facilities of any kind necessary or convenient to the exercise of such rights, powers, privileges and functions as are set forth in sub-paragraph a in this Section.

d. To sue and be sued in the name of the Housing Authority.

e. To adopt, use and alter an official seal.

f. To make by-laws for the management and regulation of its affairs.

g. To appoint officers, agents and employees, to prescribe their duties and fix their compensation.

h. To make contracts and to execute instruments necessary and convenient for the exercise of the powers, rights, privileges and functions conferred upon it by this Act.

i. To borrow money and to accept gifts for its proper purposes and in addition to the foregoing powers, which are not intended to be limited by this clause, to borrow money and accept grants from the United States of America or from any corporation or agency created or designated by the United States of America, and in connection with any such loan or grant, to enter into such agreements as the United States or such corporations or agencies created and designated by the United States may require, and to make and issue its bonds or notes for moneys borrowed. No bonds or notes authorized by the Housing Authority shall ever be secured by the revenues derived from the property leased by the Housing Authority from the University of Oklahoma except with the approval of the Board of Regents of the University of Oklahoma evidenced by formal resolution; provided however, that the said Housing Authority may, when necessary for the financing of its operations, execute mortgages on any property owned by it, the title to which is not subject to any claim on the part of the Regents of the University of Oklahoma.

Nothing in this Act shall authorize the issuance of any bonds, notes or other evidence of indebtedness of the Housing Authority however, except as specifically provided in this Act.

j. To do any and all other acts and things necessary and proper to the exercise of the powers, rights, privileges and functions conferred on said Housing Authority by this or any other Act, and

Provided, that said Housing Authority shall be liable in like manner with any person for all acts of its agents, servants and employees causing injury done in the course of their employment to any person, and to any corporation, partnership or person whose property either real or personal has been damaged by any of the above acts or defaults of the agents, servants and employees of the Housing Authority in the course of their employment; and such damage

and liability may be determined by the courts of this State in any suit as in the case of a person. Laws 1943, p. 226, § 2.

§ 1306.3 Board of directors

The powers, rights, privileges and functions of the Housing Authority shall be exercised by a board of seven (7) Directors. The membership of the Board of Directors of the Housing Authority shall be identical with that of the Board of Regents of the University of Oklahoma. The President of the Board of Regents shall be Chairman of the Board of Directors of the Housing Authority, and the Vice-President of the Board of Regents shall be Vice-Chairman. The term of each member of the Board of Directors of the Housing Authority shall be the same as his term as member of the Board of Regents of the University of Oklahoma. Each Director shall qualify by taking the official oath of office prescribed by general statute.

Each Director shall receive a fee of ten dollars ($10.00) per day for each day spent in attending meetings of the Board; and, in addition, each shall be allowed his or her actual and necessary expenses incurred in attending to the business of the Housing Authority when ordered to do so by the Chairman or Secretary thereof.

The time and place of regular meetings and the manner in which special meetings may be called shall be set forth in the by-laws of said Housing Authority. Three Directors shall constitute a quorum at any meeting, and except as otherwise provided in this Act or in the by-laws, all action shall be taken by the affirmative vote of the majority of the Directors present at any such meeting, except that no contract that involves an amount in excess of ten thousand dollars ($10,000.00), or which is to run for a longer period than a year, and no bonds, notes or other evidence of indebtedness, and no amendments of the by-laws, shall be valid unless authorized or ratified by the affirmative vote of three (3) Directors. Laws 1943, p. 227, § 3.

§ 1306.4 Secretary — General manager — Treasurer — Non-liability of directors

The Board shall select a Secretary who shall keep true and complete records of all acts and proceedings of the Board. Until the appointment of a Secretary, or in his absence, a secretary pro tempore shall be selected by the Board.

The Board shall select a General Manager who shall be the Chief Executive Officer of the Housing Authority.

The Board shall appoint a Treasurer who may also hold the office of Secretary.

The Directors of the Housing Authority shall not be liable personally for the contracts of the Housing Authority nor for the acts of their agents in carrying out their functions. Laws 1943, p. 228, § 4.

§ 1306.5 Disbursements—Bonds of officers, agents and employees

The moneys of the Housing Authority shall be disbursed only on check, drafts, orders or other instruments signed by such persons as shall be authorized to sign the same by the by-laws or resolutions concurred in by not less than four of the Directors.

The General Manager, the Treasurer and all other officers, agents and employees of the Housing Authority who shall be charged with the collection, custody or disbursement of any funds shall give bond conditioned on the faithful performance of their duties and an accounting for all funds and properties of the Housing Authority coming into their respective hands, each of which bonds shall be in form and amount and with a surety (which shall be a surety company authorized to do business in the State of Oklahoma) approved by the Board of Directors; and the premiums on such bonds shall be paid by the Housing Authority and charged as operating expense. Laws 1943, p. 228, § 5.

§ 1306.6 Meetings—Office—Accounts—Contracts, documents and records—Audit of books

Meetings of the Housing Authority shall be held in the City of Norman where said Authority shall maintain its

principal office in charge of its general manager until otherwise designated by the affirmative vote of three (3) Directors. The Housing Authority shall cause to be kept complete and accurate accounts conforming to approved methods of bookkeeping. Said accounts and all contracts, documents and records of said Housing Authority shall be kept at its principal office. Said accounts and contracts shall be kept open to inspection at all reasonable times.

The Board shall cause to be made and completed, within ninety (90) days after the end of each fiscal year, an audit of the books of account and financial records of the Housing Authority for such fiscal year, such audit to be made by an independent certified public accountant or firm of certified public accountants. Copies of a written report of such audit, certified by said accountant or firm of accounts shall be placed and kept on file with the Treasurer of the State of Oklahoma and at the principal office of the Housing Authority and shall be open to public inspection at all reasonable times. Laws 1943, p. 228, § 6.

§ 1306.7 Interest in contracts

No Director, officer, agent or employee of the Housing Authority shall be interested directly or indirectly in any contract for the purchase of any property, or construction of any work by or for the Housing Authority. If any such person shall be or become so interested in any such contracts, he shall be deemed to be guilty of a felony and on conviction thereof shall be subject to a fine of an amount not exceeding five thousand dollars ($5,000.00) or to imprisonment for not less than one (1) year nor more than three (3) years, or both. Laws 1943, p. 229, § 7.

§ 1306.8 Rents and charges—Depreciation and contingency fund—Disposition of property and money on dissolution

The Board of Directors shall establish and collect rents and board from or on account of students occupying the dormitories or other buildings erected, owned or leased by said Housing Authority, which rates for rooms and board shall be reasonable considering the current charges in the

locality and which rents and charges for room and board shall be sufficient to:

a. Pay all expenses necessary to the operation and maintenance of the facilities and properties of the Authority;

b. To pay the interest on all bonds and evidences of indebtedness;

c. To establish a sinking or reserve fund to retire the obligations of the Housing Authority at maturity;

d. To fulfill any agreements made with the holders of such obligations or any person in their behalf or with any other persons holding evidences of indebtedness due from such Housing Authority.

Out of the revenues which may be received in excess of those required for the purposes specified in sub-paragraphs a, b, c, and d above, the Board of Directors shall establish a reasonable depreciation and contingency fund to repair or replace facilities of the Authority which may become depreciated or obsolete, or to retire (by purchase and cancellation or redemption) bonds issued under this Act, or to apply the same to any purpose of the Housing Authority.

It is the intention of this Act that the rates and charges of the Housing Authority shall be such fair and reasonable rates for lodging and board of students as shall accomplish the following purposes:

1. To provide substantial accommodations for students at a cost which in the judgment of the Directors is fair and reasonable to the student and which will not discourage private rooming and boarding agencies from engaging in the business of boarding and rooming students in the community; it being the purpose of this Act to encourage the maintenance of such facilities and to standardize the character and quality of such student facilities and to insure their adequacy.

2. Any surplus accumulated by the said Housing Authority shall be used in such reasonable extension of the facilities of the said Authority as shall be deemed proper by the Directors thereof, such as providing recreational facilities for students occupying the dormitories of the Authority.

In case of the dissolution of the Housing Authority, all properties or moneys in its possession shall become the property of the University of Oklahoma. Laws 1943, p. 229, § 8.

§ 1306.9 Payment of indebtedness or obligations

Any and every indebtedness, liability, or obligation of the Housing Authority for the payment of money, however entered into or incurred and whether arising from contract, implied contract, or otherwise shall be payable solely:

1. Out of the revenues received by the Housing Authority in respect of its properties, subject to any prior lien thereon conferred by any resolution or resolutions theretofore adopted as in this Act provided, authorizing the issuance of bonds or other evidences of indebtedness or security; or

2. If the Board of Directors shall so determine, out of the proceeds of sale by the Housing Authority of bonds for the payment of which such revenues may be pledged, or from the mortgage or sale of property of the Housing Authority subject to the limitations and restrictions set forth in Section 2 hereof. Laws 1943, p. 229, § 9.

§ 1306.10 Liberal construction

This Act and all the terms and provisions thereof shall be liberally construed to effectuate the purposes set forth herein. Laws 1943, p. 230, § 10.

§ 1306.11 Partial invalidity

If any provision of this Act or the application thereof to any person or circumstances shall be held to be invalid, the remainder of the Act and the application of such provision to other persons and circumstances, shall not be affected thereby. Laws 1943, p. 230, § 11.

APPENDIX "B"

Title 70 O. S. A.

BUILDINGS AND UTILITIES FOR UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGES

§ 2071. Acquisition, construction and equipment of buildings, additions, public utilities, etc. Fees and charges—Sale of surplus commodities and services

Subject to and in accordance with the terms hereof, the Board of Regents of the University of Oklahoma for and in behalf of the University of Oklahoma, and the Board of Regents of Oklahoma Agricultural and Mechanical Colleges, for and in behalf of * * * any college, school or institution under the jurisdiction of said Board, are each hereby authorized from time to time to set aside such portion of their respective campuses or of the campuses under the jurisdiction of said boards, or any other land owned or leased by said Boards as may be necessary and suitable for the construction thereon of domitories, kitchens, dining halls, auditoriums, student Union buildings, field houses, stadiums, * * * public utility plants and systems for the supplying of water, gas, heat or power to the University of such college or institution and * * * other self-liquidating projects and other revenue-producing buildings deemed necessary by said Boards for the comfort, convenience and welfare of their students, and suitable for the purposes for which said institutions were established, including additions to existing buildings, used for such purposes; to acquire through construction, purchase, condemnation or any combination thereof, such dormitories, kitchens, dining halls, auditoriums, student Union buildings, field houses, stadiums, public utility plants and systems and other revenue-producing buildings and acquire or construct additions, improvements and extensions to existing buildings and structures used for such purposes and to equip, furnish, maintain and operate all such buildings and structures; and to acquire through purchase, condem-

nation or otherwise any land, rights-of-way, easements, licenses and permits needed for the present or future use of such buildings, structures, plants and systems; (provided, that such boards of regents shall not construct or acquire, for their respective institutions, such utility plants or systems whose capacity is in excess of the present or reasonably contemplated future needs of such institutions.)

When in the opinion of the board of regents of any such institution, any of the buildings, structures, plants and systems constructed, acquired, improved, extended, added to, furnished or equipped as above authorized are deemed necessary by the said board for the comfort, convenience and welfare of the student body as a whole, or for any specified class or part thereof, the board of regents shall have authority to charge and collect from all students in attendance at the University or such college, school or institution, or from any specified class or part thereof for which such facilities are so deemed necessary, fees and charges for the use or availability of such buildings and structures and for the services or commodities to be made available by such plants, systems or facilities. The proceeds of all such fees and charges shall be considered as revenues within the meaning of Section 3 hereof and the provisions of said section shall be applicable thereto. Where the commodities and services supplied by any such plant and system temporarily shall be found to be in excess of the requirements of the University, college, school or institution, the Board of Regents may sell the surplus to other public or non-profit consumers, including incorporated municipalities, and in that connection may enter into such agreements as it may consider advisable. All revenues received from the sale of such surplus shall likewise be considered and treated as other revenues under Section 3 hereof. Such Board of Regents may also enter into agreements for the purchase of water, electricity, gas, heat or power to be distributed through the medium of any such plant or system, provided only that no agreement entered into under the provisions of this paragraph shall pledge the credit of the State of Oklahoma. Laws 1945, p. 295, § 1; Laws 1947, p. 568, §1.

§ 2072. Bonds authorized.

For the purpose of paying all or part of the cost of acquisition of any such lands, rights-of-way, easements, licenses and permits, and the construction, acquisition, equipment and furnishing of any such building or buildings or structure or structures, plants or systems, or of any additions, improvements, or extensions thereto, or any additions to existing buildings, the Board of Regents of the institution for which such buildings, structures, plants or systems (all of which lands, rights-of-way, easements, licenses and permits, buildings, structures, plants and systems constructed, acquired, added to, improved or extended hereunder as a single project are hereafter referred to as "the building") are to be constructed, acquired, added to, improved, extended, furnished or equipped (which Board of Regents or each of them is hereinafter referred to as "the board") is authorized to borrow money on the credit of the income and revenues to be derived from the operation of the building and, in anticipation of the collection of such income and revenues, to issue negotiable bonds in such amount as may in the opinion of the board be necessary for such purposes, and is authorized to provide for the payment of such bonds and the rights of the holders thereof as hereinafter provided. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding twenty-five years from their date, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such rate or rates of interest, not exceeding five per cent per annum, as may be provided by resolution or resolutions to be adopted by the board. Such bonds may be sold in such manner and at such price or prices not less than par plus accrued interest to date of delivery, as may be considered by the Board to be advisable, but interest cost to maturity for any bonds issued hereunder shall not exceed five per cent per annum, computed on the basis of average maturities according to standard tables of bond values. Such

bonds shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the State of Oklahoma or by any county, municipality or political subdivision therein. The board may in its discretion authorize one issue of bonds hereunder for the construction, acquisition, adding to, improving, extending, furnishing or equipping of more than one building, as "building" is above defined, and may make one issue of bonds payable from the combined revenues of all buildings so constructed, acquired, added to, improved, extended, furnished or equipped, in whole or in part, with the proceeds thereof, and where bonds are so issued the words "the building" as herein used shall be construed to refer to all such "buildings."

The board may issue bonds hereunder for the purpose of refunding any obligations of the board payable from the revenues of any building, as "building" is hereinabove defined, or may authorize and deliver a single issue of bonds hereunder for the purpose in part of refunding obligations of the board payable from the revenues derived from any building or buildings and in part for the making of additions, improvements and extensions to such building or buildings, or the construction or acquisition of additional buildings, and the furnishing and equipping of such buildings or additions. Where bonds are issued under this paragraph solely for refunding purposes, such bonds may either be sold as above provided or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. Nothing herein contained shall be construed to authorize the refunding of any outstanding obligations which are not either maturing, callable for redemption under their terms, or voluntarily surrendered by their holders for cancellation, unless the board covenants that sufficient funds to pay all remaining interest and principal payments of the outstanding obligations when due will be placed in escrow for such purpose in the State Treasury at the time of delivery of and payment for the new bonds issued hereunder. All bonds issued under this paragraph

shall in all respects be authorized, issued and secured in the manner provided for other bonds issued under this act, and shall have all of the attributes of such bonds. The board may provide that any such refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. Laws 1945, p. 296, § 2; Laws 1947, p. 569, § 2.

§ 2073. Bonds payable only from revenue—Resolution authorizing bonds—Agreements and terms

The bonds issued hereunder shall not be an indebtedness of the State of Oklahoma or of the institution for which they are issued or the Board of Regents thereof, but shall be special obligations payable solely from the revenues to be derived from the operation of the building, and the board is authorized and directed to pledge all or any part of such revenues to the payment of principal of and interest on the bonds. In order to secure the prompt payment of such principal and interest and the proper application of the revenues pledged thereto, the board is authorized by appropriate provisions in the resolution or resolutions authorizing the bonds:

(a) To covenant as to the use and disposition of the proceeds of the sale of such bonds;

(b) To covenant as to the operation of the building and the collection and disposition of the revenues derived from such operation;

(c) To covenant as to the rights, liabilities, powers and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds:

(d) To covenant and agree to carry such insurance on the building, and the use and occupancy thereof as may be considered desirable and, in its discretion, to provide that the cost of such insurance shall be considered a part of the expense of operating the building;

(e) To vest in a trustee or trustees the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of

bonds issued hereunder and to hold, apply and dispose of the same, and the right to enforce any covenant made to secure the bonds and to execute and deliver a trust agreement or agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and may limit the liabilities thereof and prescribe the terms and conditions upon which such trustee or trustees or the holder or holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all such covenants and resort to such remedies as may be appropriate;

(f) To fix rents, charges and fees to be imposed in connection with and for the use of the building and the facilities supplied thereby, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the building, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the building, and with reference to requiring any class or classes of students to use the building as it may deem desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this act;

(g) To covenant to maintain a maximum percentage of occupancy of the building;

(h) To covenant against the issuance of any other obligations payable from the revenues to be derived from the buildings;

(i) To make covenants other than and in addition to those herein expressly mentioned of such character as may be considered necessary or advisable to effect the purposes of this act.

All such agreements and covenants entered into by the board shall be binding in all respects upon the board and its officials, agents and employees, and upon its successors, and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder. Laws 1945, p. 296, § 3.

§ 2074. Federal grant of funds

The board may enter into any agreement or contracts with the United States of America or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of the construction, furnishing and equipment of the building. Laws 1945, p. 297, § 4.

§ 2075. Disposition of proceeds of bonds—Contracts—Warrants

The proceeds derived from the sale of the bonds herein authorized shall be deposited in the state treasury to the credit of the board and kept in a separate fund and used solely for the purpose for which the bonds are authorized. The board is authorized to make all contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing and equipment of the building, and the State Auditor is hereby directed and authorized to issue warrants upon the state treasury against such funds for such amounts as he may from time to time find to be due upon audited itemized estimates and claims which bear the approval of the officials designated by the board for such purpose. Laws 1945, p. 297, § 5.

§ 2076. Disposition of proceeds of operation of buildings

Except as to revenues paid directly to a trustee under the provisions of sub-section (e) of Section 3 hereof, all income and revenues derived from the operation of the building shall be deposited as collected in a fund in the state treasury to be applied solely to the payment of the principal of and interest on the bonds and, to the extent so provided in the resolution authorizing the bonds, to the payment of the cost of maintaining and operating the building and the establishment of reserves for such purpose. As principal and interest becomes due from time to time the State Treasurer shall, not less than fifteen days prior

to the payment date, transmit to the paying agent for the bonds, money from said fund in an amount sufficient to pay the principal or interest so falling due. Said fund and the money therein is hereby irrevocably pledged to such purposes. Laws 1945, p. 298, § 6.

§ 2077. Form of bonds—Approval by Attorney General

All bonds issued hereunder shall have on the backs thereof the certificate required by Section 29 of Article 10 of the Constitution of Oklahoma. Such bonds shall be submitted to the Attorney General of Oklahoma for his examination and when such bonds have been examined and certified as legal obligations by the Attorney General in accordance with such requirements as he may make, shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction thereof within thirty days from the date of such approval. Bonds so approved by the Attorney General shall be prima facie valid and binding obligations according to their terms and the only defense which may be offered thereto in any suit instituted after such thirty day period shall have expired shall be forgery, fraud or violation of the constitution. Laws 1945, p. 298, § 7.

§ 2078. Public funds, etc., may be invested in bonds

Any bank, trust or insurance company organized under the Laws of Oklahoma may invest its capital, surplus and reserves in bonds issued under the provisions of this Act. The officers having charge of any sinking fund * * * or any other fund of the State or any department, agency or institution thereof, including the various funds established by Chapter 27 of Title 70 (House Bill Number 244) of the Session Laws of 1945, or any county, city, town, township or school district in the State, may invest such funds in bonds issued under the provisions of this act at the reasonable market value thereof. Such bonds are also approved as collateral security for the deposit of any public funds and for the investment of trust funds. Laws 1945, p. 298, § 8; Laws 1947, p. 570, § 3.

§ 2078.1 Borrowing money and issuing notes in anticipation of bond issue

Whenever the board shall have adopted a resolution authorizing the issuance of any series of bonds hereunder and said bonds have been sold but prior to the time as of which the bonds can be delivered the board finds it necessary to borrow money for the purpose for which the bonds were authorized, the board may, by appropriate resolution, authorize the borrowing of money in anticipation of the issuance of the bonds, and the issuance of the note or notes of the board to evidence such borrowing. The amount so borrowed shall not exceed the principal amount of the bonds and shall not bear interest at a rate exceeding the average interest rate of the bonds. Such note or notes shall be signed in the manner prescribed by the board and shall be made payable at such time or times as the board may prescribe not later than one year from their respective dates and may be renewed from time to time by the issuance of new notes hereunder. The proceeds of any loan made under this section shall be devoted exclusively to the purposes for which the bonds shall have been authorized and the note or notes and the interest thereon shall be paid with the proceeds of the bonds simultaneously with the delivery of the bonds. If for any reason the bonds shall not be issued, the holder or holders of the notes shall be entitled to all rights which would have been enjoyed by the holders of the bonds had they been issued, and the notes shall be paid from the revenues provided for the payment of the bonds and shall be entitled to the benefit of all covenants, agreements and rights appearing in the resolution authorizing the bonds for the benefit of the bonds. Laws 1945, p. 298, § 8a, added Laws 1947, p. 570, § 4.

§ 2079. Approval of bonds by Supreme Court

The board is authorized in its discretion to file an application with the Supreme Court of Oklahoma for the approval of any series of bonds to be issued hereunder, and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each such appli-

cation. It shall be the duty of the court to give such applications precedence over the other business of the court and to consider and pass upon the applications and any protests which may be filed thereto as speedily as possible. Notice of the hearing on each application shall be given by a notice published in a newspaper of general circulation in the state that on a day named the board will ask the court to hear its application and approve the bonds. Such notice shall inform all persons interested that they may file protests against the issuance of the bonds and be present at the hearing and contest the legality thereof. Such notice shall be published one time not less than ten days prior to the date named for the hearing and the hearing may be adjourned from time to time in the discretion of the court. If the court shall be satisfied that the bonds have been properly authorized in accordance with this act and that when issued they will constitute valid obligations in accordance with their terms, the court shall render its written opinion approving the bonds and shall fix the time within which a petition for rehearing may be filed. The decision of the court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the board, its officers and agents, and thereafter the bonds so approved and the revenues pledged to their payment shall be incontestable in any court in the State of Oklahoma. Laws 1945, p. 298, § 9.

§ 2080. Lease of buildings

In any instance in which the board shall consider it preferable to acquire the building or additions to existing buildings and equipment therefor in the manner authorized in this section rather than through the issuance of bonds by the board, it may do so by complying with this section. In each such case the board is authorized to lease to any nonprofit corporation organized for the purpose of constructing the building or additions to existing buildings, such portion or portions of the campus of the institution as may be necessary as sites therefor. The lease shall contain such provisions with respect to the type, construction and operation of any such building or addition as the board

may consider desirable, and the board may enter into agreements with the non-profit corporation as to the use which will be made of any such building or addition, the operation, maintenance and supervision of said building or addition, the imposition of fees and charges by the board for the use of the building or addition, and the collection and disposition to be made of the proceeds of such fees and charges. The board may agree to make such fees and charges adequate to provide a sum sufficient to pay the cost of the maintenance and operation of the building or any addition to existing buildings and the amortization of the cost of the building or any addition to existing buildings and equipment therefor, over a specified period of years, and when such cost shall have been paid and any obligations issued by the non-profit corporation to finance such cost shall have been fully paid as to principal and interest, the lease shall terminate and title to the building or any addition to existing buildings and equipment shall vest in the board. The agreements herein authorized to be entered into by the board may, in the discretion of the board, include a lease of the building from the non-profit corporation and the payment of rentals therefor. The board may furnish without charge, heat, light, water, power and similar facilities for any building under the provisions of this section and all buildings and additions to existing buildings so erected and equipment therefor shall be exempt from taxation. Laws 1945, p. 299, § 10.

APPENDIX "C"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

Civil No. 5238

MARY PYEATTE, *Plaintiff*

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, THE UNIVERSITY OF OKLAHOMA HOUSING AUTHORITY, AND GEORGE L. CROSS, *Defendants*

Before MURRAH, Circuit Judge, and VAUGHT and WALLACE, District Judges.

WALLACE, District Judge.

OPINION

This is a class action for an interlocutory injunction and a permanent injunction to restrain the enforcement of a ruling of an administrative board acting under and by authority of a State statute. The jurisdiction of the court is invoked under the Judicial Code, 28 U.S.C.A. § 1343 (3) and 28 U.S.C.A. § 2281.

The plaintiff in this class action seeks an injunction to prevent the enforcement of certain rules promulgated by the Board of Regents of the University of Oklahoma, contending that the enforcement of such rules denies the liberties of the plaintiff and others in a similar situation as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The facts are as follows:

The University of Oklahoma is located at Norman, Oklahoma. It is a part of the educational system of the State and is maintained and operated from public funds raised by taxation from the citizens and taxpayers of the State. The government of the University is vested in a Board of Regents with authority delegated to do everything neces-

sary to accomplish the objects of the school, not expressly or impliedly prohibited.

The defendant University of Oklahoma Housing Authority was created by Title 70 O.S.A. § 1306.1, designated as a body corporate, and given the power to erect dormitories, and create and furnish dining facilities. By Title 70 O.S.A. § 1306.3, the membership of the Board of Directors of the University Housing Authority was made identical with the Board of Regents of the University. Subsequent to the statutory provisions above, other statutes became effective which dealt in substance with the same subject matter, but were broader in scope and contained many new provisions. This later legislation is contained in Title 70 O.S.A. § § 2071 to 2080, passed in 1945 and later amended in 1947. The provisions of the original Act of 1945 and the amendment in 1947 are for all practical purposes and for the purposes of this litigation, the same.

The 1945 Act, both before and after its amendment, authorizes both the Board of Regents of the University of Oklahoma and the Board of Regents of the Oklahoma Agricultural and Mechanical Colleges to set aside such portions of their respective campuses as may be necessary and suitable for the construction thereon of dormitories, kitchens, and other self liquidating projects, and other revenue producing buildings including additions to existing buildings used for such purposes and to construct such buildings or additions thereon and to equip, furnish, maintain and operate such buildings. The Act also provides for authorization by the Board of Regents to issue bonds for the purpose of paying the cost of the above projects and "to provide for the payment" thereof. Another provision of the Act provides that said bonds shall be paid "solely from the revenues to be derived from the operation of" said dormitories and other buildings, same to be pledged "to payment of principal of and interest on the bonds."

In furtherance of the statutory provisions and in order to meet the obligations of any bonds which were issuable under the authority delegated to the Board of Regents, Title 70 O.S.A. § 2073 provides as follows:

> "* * * In order to secure the prompt payment of such principal and interest and the proper application of

the revenues pledged thereto, the board is authorized by appropriate provisions in the resolution or resolutions authorizing the bonds;

* * * * * * *

"(f) to fix rents, charges and fees to be imposed in connection with and for the use of the building and the facilities supplied thereby, which rents, charges and fees shall be considered to be income and revenues derived from the operation of the building, and are hereby expressly required to be fully sufficient to assure the prompt payment of principal and interest on the bonds as each becomes due, and to make and enforce such rules and regulations with reference to the use of the building, and with reference to requiring any class or classes of students to use the building as it may deem desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this act;

"(g) to covenant to maintain a maximum percentage of occupancy of the building;"

* * * * * * *

The Board of Regents of the University of Oklahoma adopted a Resolution Of Student Housing on September 10, 1947, amended February 14, 1948, which provides as follows:

* * * * * * *

"(1) That all undergraduate, unmarried students be required to live in University-operated dormitories to the extent that such dormitory rooms are available on the Main Campus of the University; provided that such requirements shall not apply to undergraduate, unmarried students who (a) live with parents or other relatives in Norman or (b) commute from a place of residence outside Norman or (c) work for room in lieu of paying rent; and provided further that such requirement shall not apply to students who live in a fraternity, sorority or approved student cooperative house, except that all freshmen women students not in

categories (a), (b) or (c) above shall live in University-operated dormitories to the extent such facilities are available.

"(2) That all undergraduate, married students living in Norman with husband or wife be required to live in University operated family dwelling units in Sooner City, Boyd House, and Niemann Apartments to the extent that such family dwelling units are available, provided that such requirements shall not apply to undergraduate married students who (a) live with parents or other relatives in Norman (b) work for living quarters in lieu of paying rent or (c) own and occupy their homes in Norman."

* * * * * * *

There are specific exemptions from housing regulations as to married students with children, all graduate students and in special cases of hardship exceptions are made for individuals.

It is a prerequisite that all persons who seek enrollment in the University of Oklahoma comply with the Housing Regulations before they are permitted to attend the University.

The plaintiff in this case is a resident of Norman, Oklahoma, a taxpayer of the State and is engaged in the rooming and boarding house business. Prior to 1947, students in attendance at the University were permitted to live in approved rooming and boarding houses, fraternity and sorority houses, private dormitories, and dormitories maintained and operated by the University of Oklahoma, all under the supervision and control of the University of Oklahoma. The home of the plaintiff was one of the private homes that was approved by the authorities for the keeping of male students in attendance at the University. In other words, her home met the specifications and requirements exacted by the Board of Regents for the housing of students.

The statutory provisions passed by the Legislature and set out above were for the purpose of delegating to the Board of Regents of the University the power to take steps to insure adequate facilities for the housing of students

who would then and in the future attend the University of Oklahoma. The Housing Regulations were promulgated and put into force and effect as a means for accomplishing the end in view.

Under the Housing Regulations as they now exist, plaintiff finds herself in the position where facilities of the University and other approved dormitories such as fraternities and sororities are adequate to house all or a great majority of the university students. As a result, plaintiff has difficulty, if not finding it impossible, to fill her rooms with students. It is the contention of the plaintiff that the defendants are violating her constitutional rights in the following particulars:

> (1) That the rules pertaining to housing of students which are or were allegedly promulgated under and by authority of the statutes set out above, insofar as they prevent contractual relations from being entered into between members of the student body of the University of Oklahoma and the Plaintiff, deprive the plaintiff of her liberty to contract and her property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.
>
> (2) That the rules, insofar as they permit fraternal organizations, and a dormitory known as Newman Hall run by a religious organization, to contract with students for their room and board, while denying a similar privilege to the plaintiff, are unreasonable, arbitrary, and discriminatory, and deny to the plaintiff the equal protection of the laws.

The Fourteenth Amendment of the Federal Constitution provides in part:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is this part of the Constitution upon which the plaintiff relies. It is undoubtedly true that the right to contract is

both a liberty and a property right within the protection of the Fourteenth Amendment to the Federal Constitution. *Holden* v. *Hardy*, 169 U.S. 366, 18 S. Ct. 383, 42 L. Ed. 780; *Allgeyer* v. *Louisiana*, 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 832. It is also true that the same limitations are placed upon administrative agencies of the State as are applicable to the direct action of the State. *Mooney* v. *Holohan*, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791; *Smith* v. *Allwright*, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed 987.

Plaintiff has overlooked entirely the fact that the right to contract is not an absolute right and that a State may validly limit or in some cases effectively prohibit contractual relations. As was so aptly stated by Mr. Justice Holmes in *Block* v. *Hirsh*, 256 U.S. 135, 155, 41 S. Ct. 458, 65 L. Ed. 865; and quoted with approval in *Bowles* v. *Willingham*, 321 U.S. 503, 518, 519, 64 S. Ct. 641, 88 L. Ed. 892:

> "The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislative modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, under which property rights may be cut down, and to that extent taken, without pay."

The enactment of statutes, or rules and regulations promulgated under authority of statute, invariably involve a modification of existing private rights and privileges of at least some persons. The due process clause does not prevent extensive governmental control of private interests for the protection and welfare of the public at large. It is quite impossible to draw a distinct line between the permissable and the prohibited forms of regulation to which the due process clause applies and in the final analysis of judicial construction of constitutional provisions, it becomes necessary to weigh the individual interests against the social desirability of governmental control or regulations which

may or do affect those interests. A general rule has developed for reconciling the claims of government to regulate, and those of private interests to freedom from regulation, as pertaining to due process, and this is that due process is a guarantee only against unreasonable and arbitrary legislative or other governmental control. *Nobbia* v. *New York*, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940.

Many times legislation is upheld upon the theory that regulatory measures in a certain degree are permissible under the "police power" of the state. Not all legislation or administrative rulings need rely upon or be "justified" upon the theory of police power. As was said by Mr. Justice Holmes, dissenting in Tyson Bros. v. Banton, 273 U.S. 418, 445, 47 S. Ct. 426, 71 L. Ed. 718:

> "* * * police power often is used in a wide sense to cover and, as I said, to apologize for the general power of the Legislature to make a part of the community uncomfortable by a change."

It is immaterial whether the terminology used is police power or the general power of the Legislature, since the issue as to whether or not due process has been denied to the plaintiff hinges upon whether or not the statutes and rules are arbitrary, unreasonable, or capricious. When inquiring into the reasonableness of an act, the court must evaluate the benefit to be derived from upholding the statute or regulation and the loss suffered or likely to be suffered by a resulting deprivation of some private interest. In analyzing reasonableness of an act, several elements should be considered:

* * * * * * *

> "* * * The conditions existing prior to the legislation, the effectiveness of the new rule to improve them, the deprivation resulting from the new rule, and the possibility of achieving the same benefits at a lower price."
>
> From a Note, "The Consideration of Facts in 'Due Process' Cases," 30 Columbia Law Review 360, 362 (1930).

Title 70 O.S.A. § 1218 provides as follows:

"The said board of regents shall make rules, regulations and by-laws for the good government and management of the university and of each department thereof; prescribe rules and regulations for the admission of students * * *"

Over and above the express power conferred upon the Board of Regents by the statutory provision, the Oklahoma Constitution also provides for government of the University by the Board of Regents. Article 8 § 13 Oklahoma Constitution. The term "government" is very broad and necessarily includes the power to pass all rules and regulations which the Board of Regents considers to be for the benefit of the health, welfare, morals and education of the students, so long as such rules are not expressly or impliedly prohibited. *Rheam* v. *Board of Regents of University of Oklahoma*, 161 Okl. 268, 18 P. 2d 535.

It cannot be questioned that proper housing for students is an integral part of the responsibility placed upon the authorities of the University of Oklahoma. The great majority of the students must have a home away from home while attending school at the University, and it is incumbent upon school authorities to see that all precautions are taken to insure that not only adequate but also suitable housing is available.

As heretofore stated, before a student is permitted to attend classes at the University, he must comply with the Housing Regulations. This has the effect of being a condition precedent to enrollment in the University. There is no absolute and unequivocal right belonging to any individual to attend the University free of any restrictions or rules pertaining to admission. The Board of Regents has found it desirable, expedient and for the good of the University as well as the students to require them to live in the designated housing insofar as it is available. To accomplish the end in view, the housing regulations were put into effect as part of the requirement for admission to the University.

The Supreme Court of the United States has had occasion in at least two cases to rule upon regulations of state uni-

versities concerning requisites of admission. In the case of *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U.S. 589, 35 S. Ct. 720, 59 L. Ed. 1131, the Supreme Court affirmed the decision of the Mississippi State Court which held a student could not take part in certain activities while attending the University of Mississippi unless all affiliation with any Greek letter college fraternity was renounced. In the opinion on appeal to the United States Supreme Court, it was held:

> "The next contention of complainant has various elements. It assails the statute as an obstruction to his pursuit of happiness, a deprivation of his property and property rights, and of the privileges and immunities guaranteed by the Constitution of the United States. Counsel have considered these elements separately and built upon them elaborate and somewhat fervid arguments, but, after all, they depend upon one proposition: whether the right to attend the University of Mississippi is an absolute or conditional right.
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> * * * * * * *
>
> "This being our view of the power of the Legislature, we do not enter upon a consideration of the elements of complainant's contention. It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law, and the condition upon which the State of Mississippi offers the complainant free instruction in its University, that while a student there he renounce affiliation with a society which the State considers inimical to discipline, finds no prohibition in the 14th Amendment."

In the case of *Hamilton* v. *Regents of the University of California*, 293 U.S. 245, 55 S. Ct. 197, 79 L. Ed. 343, the Supreme Court of the United States again held that a university could make regulations that students must meet as a condition precedent to attendance. In this case it was held that a conscientious objector could be excluded from the university if he did not take military education.

In *Hoyt et al.* v. *Trustees of State Normal School*, 44 P. 2d 513, the Supreme Court of Colorado, speaking of a bond issue and regulations pertaining thereto, said:

> "* * * Principal and interest are payable from, and to be secured by, a first and exclusive charge on the net revenues of the project to be constructed. The revenues are to be obtained from charges made to first year students who are to be required to reside in the dormitories, and in the event there is an insufficient number of first year students to fill to capacity, then upper class girls will be required to reside there. * * *
>
> * * * * * * *
>
> "It undoubtedly is within the controlling power delegated to the board of trustees to promulgate and enforce reasonable rules for the conduct and discipline of the institution. Plaintiffs object to the action of the board in contracting with the government to adopt and enforce rules and regulations, for revenue raising purposes, requiring students to occupy the dormitories at arbitrarily fixed rates, and insist that such rules infringe upon the constitutional guaranty of the liberty to contract for such, by the students or those acting for and in their behalf. Such objection, presented by plaintiffs as taxpayers, house owners, and boarding house keepers, is without force and effect here. If it could effectively be made, and we do not decide whether it could or could not be successfully interposed by proper parties, we are of the opinion and so decide, that it is without force when presented by plaintiffs in the capacity in which they appear in this suit. They do have the capacity, if they have a cause of action, to maintain such against the creation of an indebtedness and the pledging of the credit of the state, contrary to and beyond the constitutional and statutory limitations. The trial court, upon the pleadings and the evidence, determined that plaintiffs had no such cause of action, which determination we find is amply supported by the evidence and the law."

Plaintiff does not challenge the authority of the University of Oklahoma to issue rules to govern admission to the University, but contends that the effect of the rules is to prevent her from contracting with the students for room and board and that such prevention is a violation of her liberty to contract. (Plaintiff also has another contention which will be considered later.) In order to sustain this somewhat dubious approach, the plaintiff has placed herself in an anomalous position. On the one hand there is an admission that reasonable rules for admission to the University are proper and valid and in the next breath it is contended that her rights to contract have been denied by the very same rules which are proper and valid. Counsel for plaintiff evidently foresaw this position and has fallen back upon the trite phrase that "a state cannot do indirectly what it cannot do directly". The distinction between those cases where such a phrase is applicable and the case at bar is so obvious as to merit absolutely no consideration.

The plaintiff has not in any way had her rights to contract for roomers and boarders impaired. It is true and regrettable that a certain number of persons designated as students are not available for taking the rooms offered by the plaintiff. This state of affairs was brought about by the Housing Regulations and does affect the plaintiff adversely, but when a state acting in a proper sphere passes regulations which are valid and suitable to attain a desired end, the mere fact that such legislation or regulatory measures has an incidental effect upon a few individuals, does not make the regulation invalid or abridge the constitutional rights of the individual. Stating it another way, the effect of the Housing Resolution does not destroy the plaintiff's right to contract with respect to her property. It does not forbid her to contract with any student. It merely creates a condition of affairs which renders the making of a related contract, lawful in itself, ineffective, and this is not fatal to its constitutionality. *Bayside Fish Flour Co.* v. *Gentry*, 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772.

The Constitution of the United States guarantees to all persons certain liberties, but many times these liberties must give way in part to co-existing or co-equal rights invested

in others. It would appear that if any right has been violated, it would be the right of the student to contract for a place to live of his own choice and not a right of a person in the position of the plaintiff. Even so, as stated in *Alaska Packers Assn.* v. *Industrial Accident Commission of California*, 294 U.S. 532, 543, 55 S. Ct. 518, 79 L. Ed. 1094:

> "Legislation otherwise within the scope of acknowledged state power, not unreasonable or arbitrarily exercised, cannot be condemned because it curtails the power of the individual to contract."

The Housing Regulations in effect at the University of Oklahoma result in completely depriving a student of freely contracting with whom he pleases for a place to live. If this restriction upon the student is a valid exercise of the power conferred upon the Board of Regents to prescribe rules for admission to the University, it is absurd for the plaintiff to contend that the indirect effect deprives her of her liberty to contract, for the fact that regulatory law enacted under state power imposes hardship in individual cases, due to special circumstances or other factors, does not subject the law to constitutional objections.

There is a presumption of the validity of state statutes or regulations passed by an administrative agency acting by authority delegated to the agency. If there is any state of facts which tends to support the regulatory measures and such measures are not clearly unreasonable or arbitrary, then the statute or regulation will be upheld as being constitutional. This court cannot, in light of the evidence and in contravention of the good judgment of the Board of Regents of the University of Oklahoma, say that the action taken was unreasonable or arbitrary. The state has a decided interest in the education, well-being, morals, health, safety and convenience of its youth. When a situation arises where it becomes necessary to expend great sums for buildings to house students, it is within the power of the state acting through an administrative agency to provide such facilities, and when it is necessary for rules to be passed to provide payment for such buildings in furtherance of the object to be accomplished, such rules will be

valid as a means accompanying the over-all policy of furnishing the needed facilities.

The question thus "do the statutes and rules involved here deprive the plaintiff of any property right without due process of law?" must be answered in the negative.

There is one further contention of the plaintiff which requires more consideration than the contention of a violation of her liberty to contract heretofore disposed of. This second contention is that plaintiff has been discriminated against without equal protection of the laws. Plaintiff bases this contention upon the ruling by the University that students may live in sorority or fraternity houses and Newman Hall, but cannot live in private homes approved by the University for the housing of students until university housing is filled.

It would appear here, as in the preceding discussion, that if any discrimination is involved, and we do not pass upon this point, it is against the students and not against the private home owners such as the plaintiff. Thus the plaintiff would not be in a position to challenge the constitutionality of the statutes or regulations promulgated under and by force of the power conferred upon the Board of Regents by such statutes. However, the plaintiff has raised the issue of discrimination against herself as a private householder duly approved by the University to keep students and other private organizations such as fraternal organizations and Newman Hall owned by the Catholic Church. There is a substantial issue raised in this respect and the court must consider it with all due deference to the rights of plaintiff.

Substantive due process and equal protection of the laws are very similar in many respects. However, as stated in Bottschaefer on Constitutional Law, 1st Ed. (1939):

> "There is a marked difference between the protection accorded individual interests by the due process and equal protection clauses of the Fourteenth Amendment. The former limits the general character of regulation that may be imposed on conduct even when it is applied to every case in which the regulated conduct occurs; the latter is a limit merely on the power of making classifications in the enactment and enforcement of

> regulatory legislation. A regulation violates the former if it is arbitrary and unreasonable, but can violate the latter only if the group subjected to it has been arbitrarily selected and defined."

In the case of *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79, 31 S. Ct. 337, 55 L. Ed. 369, certain rules were enumerated by which the equal protection contention is to be tested. These rules are as follows:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. *A classification having some reasonable basis does not offend against that clause merely because in practice it results in some inequality.* 3. When the classification in such a law is called in question, if any state of facts reasonably be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." (Emphasis added.)

The Fourteenth Amendment is thus not an absolutely inflexible and austere requirement of the impracticable. Equal protection of the law does not guarantee that every business or occupation that is similar must be treated in the precise manner as all others. As stated in *Armour & Co.* v. *North Dakota*, 240 U.S. 510, 517, 36 S. Ct. 440, 60 L. Ed. 771, referring to the power of the State in making classifications:

> "The power may be determined by degrees of evil or exercised in cases where detriment is especially experienced."

The court in its consideration or treatment of any particular basis of classification must ultimately refer to the problem in connection with which it was made. The record

discloses that at the time the rules and regulations were promulgated there were between twelve and thirteen thousand students enrolled, with over a thousand students without proper or available accommodations, besides those commuting from other places. What brought about the condition, aside from the school outgrowing the community, is more or less speculative, but it can be fairly inferred it resulted by war activities that required housing units and living quarters in the community surrounding the University. The plaintiff would be an exception to the general run of landlords if she did not take advantage of such a situation.

The University in its over-all program for housing facilities has evidently come to rely in great measure upon the fraternal dormitories and Newman Hall as a complement to the housing owned and managed by the University itself. These dormitories are not available for any purpose other than housing students, and past experience indicates that they will be available to the University at all times. On the other hand, the private homes such as that owned by the plaintiff are not an integral part of the housing program but are furnished mainly for the purpose of earning for the benefit of the private owner. The private home owners may at any time use their homes for a variety of purposes and without any restrictions may deny their use to the University for the housing of students. It is true that many private homes were used in the past for the purpose of housing facilities for students and for this the private home owners are to be commended. However, it appears that in the light of the over-all picture the classification which has been made by the University Board of Regents is a reasonable one and not arbitrarily or capriciously exercised to deny to the plaintiff the equal protection of the laws.

The relief sought is denied and the action is dismissed.

Endorsed: Filed in District Court January 25, 1952.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 581

MARY PYEATTE,

Appellant,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, THE UNIVERSITY OF OKLAHOMA HOUSING AUTHORITY, AND GEORGE L. CROSS,

Defendants

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO AFFIRM.

The appellees (defendants) in the above entitled cause, Board of Regents of the University of Oklahoma, et al., for their statement as to the jurisdiction herein, and in support of appellee's (defendants) motion to affirm, respectfully show the following:

The questions raised on behalf of appellants are so unsubstantial as not to need further argument, since all of the issues raised therein have been determined by this and other courts adversely to the position of appellant. In

support of the above statement attention is called to the case of *Hoyt et al.* v. *Trustees of State Normal School* (Col-1935), 44 P. 2d 513, wherein the third editorial headnote is as follows:

> "Taxpayers and householders, suing trustees of state normal school to enjoin construction of dormitories under local agreement with United States government, could not raise objection that provision of contract binding trustees to enforce rules requiring students to occupy dormitories at arbitrarily fixed rates was unconstitutional infringement of liberty of contract (C.L. §§ 8164, 8168, 8169; Laws 1933, 1st Ex. Sess., p. 102, §§ 2, 3)."

The appellant can only claim that a constitutional right to contract has been violated if the housing regulations violate the right of any student to contract for a place to live. (*Pierce* v. *Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 69 L. Ed. 1070).

The housing regulations of the University of Oklahoma do not violate any rights of the students, because a university may make any necessary rules that students must meet as a condition of attendance (*Hamilton* v. *Regents of the University of California*, 293 U.S. 245, 79 L. Ed. 343; *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U.S. 589, 59 L. Ed. 1131.

No unlawful discrimination is practiced by the University in relation to students living in fraternity and sorority houses and in church owned dormitories compared with students living in rooming and boarding houses in Norman, Oklahoma, by reason of the fact that the houses first above mentioned are at all times occupied only by students of the University of Oklahoma and are controlled by the University as housing units supplementary to the University

Dormitory System. Such classification is, therefore, appropriate and proper.

MAC Q. WILLIAMSON,
Attorney General of Oklahoma;
FRED HANSEN,
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Attorneys for Appellees (Defendants).

Of Counsel:

JOHN B. CHEADLE,
GEORGE B. FRASER,
Norman, Oklahoma.

Acknowledgment of Service

The undersigned appellant hereby acknowledges that on February 3, 1952, a copy of the foregoing instrument was served on her.

PAUL W. UPDEGRAFF,
Attorney for the Appellant,
Mary Pyeatte.

Endorsed: Filed in District Court February 5, 1952.